

JOHN CONYERS, JR.  
13TH DISTRICT, MICHIGAN

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September 21, 2017

Brian Cassin  
Chief Executive Officer  
Experian PLC  
475 Anton Boulevard  
Costa Mesa, California 92626

Dear Mr. Cassin:

We write to express our deep concern regarding the rights of hardworking Americans to their day in court in the wake of the Equifax data breach, one of the largest and potentially most damaging in history. The economic security of 143 million Americans has been jeopardized by this massive security failure. Making matters worse, many of those affected are unsure whether they even have legal recourse because of Equifax's initial use of forced arbitration clauses in its identity protection service. Although Equifax has revised its policy in response to public outcry, this limited change is simply not enough. Consumers across the country will likely turn to your credit monitoring and identity theft protection services because of this breach. Americans deserve to know that their legal rights are not undermined by doing business with Experian or because of a potential data breach at your company. We therefore request information concerning your plans to revise your terms of service and stance on the Consumer Financial Protection Bureau's (CFPB) arbitration rule to restore consumers' day in court.

The Equifax data breach has shaken public confidence in the entire credit rating industry.<sup>1</sup> As you know, credit reporting agencies collect and store Americans' most sensitive data: Social Security numbers, driver's license numbers, dates of birth, and other forms of personally identifiable information. Once stolen, this data can be used by identity thieves for countless forms of fraudulent activity: opening fake bank accounts, filing fake tax returns, and other misconduct that has ruinous effects on the financial security of affected consumers. Until

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<sup>1</sup> Farhad Manjoo, *Seriously, Equifax? This Is a Breach No One Should Get Away With*, N.Y. TIMES (Sept. 8, 2017), <https://nyti.ms/2xRTaSL>.

recently, Equifax's terms of service included a forced arbitration clause for all of its products and services.<sup>2</sup> But in the wake of widespread public alarm,<sup>3</sup> Equifax has revised its policy.<sup>4</sup>

We are concerned about your company's use of forced arbitration in its terms of service, which include a forced arbitration clause and class action waiver.<sup>5</sup> It states:

WE ALSO AGREE THAT ANY CONTROVERSY CONCERNING WHETHER A DISPUTE IS ARBITRABLE SHALL BE DETERMINED BY THE ARBITRATOR, NOT A COURT. ARBITRATION IS MORE INFORMAL THAN A LAWSUIT IN COURT. ARBITRATION USES A NEUTRAL ARBITRATOR INSTEAD OF A JUDGE OR JURY, ALLOWS FOR MORE LIMITED DISCOVERY THAN IN COURT, AND IS SUBJECT TO VERY LIMITED REVIEW BY COURTS. ARBITRATORS CAN AWARD THE SAME DAMAGES AND RELIEF THAT A COURT CAN AWARD. ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED.<sup>6</sup>

Americans are right to be outraged and frustrated by the use of forced arbitration in the terms of service of credit reporting agencies.<sup>7</sup> Forced arbitration clauses are a bald and predatory attempt to shield corporations from liability for their misconduct through the fine print of contracts. Americans unknowingly waive their legal rights and are forced into arbitration when disputes arise. In contrast to forced arbitration---a secretive, biased, and unfair---our courts are a guarantor of impartiality, fairness, and providing equal justice under the law for all Americans. The justice system is one of the few tools that everyday citizens have to fight deceitful and harmful business practices, vindicate their rights, and pursue justice.

In recognition of the importance of Americans' access to justice, the CFPB has finalized a rule to eliminate forced arbitration from consumer financial product contracts. This protection restores the rights of Americans to a day in court, and the transparency that comes with it, if their rights are violated by unscrupulous financial services and products. This new protection is vital for the economic security of the American people and our country's commitment to the rule of law. But rather than support this commonsense protection, your company and others like it have

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<sup>2</sup> Brian Fung, *Equifax finally responds to swirling concerns over consumers' legal rights*, Wash. Post (Sept. 10, 2017), [https://www.washingtonpost.com/news/the-switch/wp/2017/09/08/what-to-know-before-you-check-equifaxs-data-breach-website/?utm\\_term=.1c4b5f922335](https://www.washingtonpost.com/news/the-switch/wp/2017/09/08/what-to-know-before-you-check-equifaxs-data-breach-website/?utm_term=.1c4b5f922335).

<sup>3</sup> *Id.*

<sup>4</sup> EQUIFAX, *Terms of Use* (last visited Sept. 15, 2017), <http://www.equifax.com/terms/>.

<sup>5</sup> EXPERIAN, *Claims by Binding Arbitration* (last accessed on Sept. 15, 2017), <http://www.experian.com/assets/consumer-information/arbitration/vantagescore-arbitration-agreement.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *See, e.g.*, David Lazarus, *The real outrage isn't Equifax's arbitration clause — it's all the others*, L.A. Times (Sept. 12, 2017), <http://www.latimes.com/business/lazarus/la-fi-lazarus-equifax-arbitration-clauses-20170912-story.html>.

reportedly campaigned against it, spending millions in campaign contributions and other efforts to undermine both the rule and the CFPB.<sup>8</sup>


Now is the time to demonstrate your respect for the rights of your customers, not undermine them. Given these concerns, we ask whether you intend to revise your terms of service to protect Americans' access to justice by eliminating your company's use of forced arbitration and class action waivers. Furthermore, we ask whether you will end your opposition to the CFPB arbitration rule.

Thank you for your attention to this matter. We look forward to your response no later than October 15, 2017.


Sincerely,




David N. Cicilline  
Member of Congress



Henry C. Hank Johnson, Jr.  
Member of Congress



John Conyers, Jr.  
Member of Congress



Don Beyer  
Member of Congress

<sup>8</sup> Michael Hiltzik, *Before its massive data breach, Equifax fought to kill a rule allowing victims to sue*, L.A. TIMES (Sept. 11, 2017), <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-equifax-arbitration-20170911-story.html>.